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From: Winner, Darrell
Sent: Wed 7/26/2017 1:21:41 PM
Subject: RE: 7/25/2017 Research News Clips

What a great use of Agency resources – investigate a program with zero funding!

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Subject: FW: 7/25/2017 Research News Clips

Lots of climate stories and one on IG investigation of fellowship program.

Best,

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Subject: 7/25/2017 Research News Clips

Administrator Pruitt/EPA General

EPA: IG starts field work on fellowship probe Greenwire

The U.S. EPA inspector general will conduct field work for its review of the agency's fellowship programs.

In a **notice** dated Friday, the IG's office said it plans to begin the "field work phase" of its audit of the EPA research office's fellowship programs.

The agency watchdog plans to determine whether EPA's noncompetitive awards to nonprofit groups for the fellowships are an effective use of taxpayer funds and meet the agency's mission and whether the costs reported by the nonprofits are accurate and allowed.

The IG will conduct its field work at EPA headquarters as well as in the offices of the nonprofit groups, according to the memo, signed by Michael Petscavage, director of contract and assistance agreement

audits for the inspector general's Office of Audit.

As part of the IG's review, investigators will focus on fellowships from the Association of Schools and Programs of Public Health, the American Association for the Advancement of Science, and the National Academy of Sciences.

This is the second notice for the audit. In March, the inspector general said it would begin "preliminary research" for the fellowship review (*E&E News PM*, March 6).

CABINET: Top officials harden against climate science since confirmation **Climatewire**

President Trump's Cabinet nominees were on message in January when senators drilled them on climate change at their confirmation hearings.

One after the other, they distanced themselves from Trump's idea that global warming is a hoax. They offered reassurances that their views comport, mostly, with mainstream scientists who say that humans are driving climate change. They just weren't sure how much.

At the time, some Obama administration officials felt cautiously relieved. They knew Trump's staff would halt climate action, but they thought the heads of energy and environment agencies might at least stay out of a broader political and legal fight over whether climate change is real.

"I was shocked when I watched [EPA Administrator Scott] Pruitt," said Tristan Brown, deputy associate administrator for congressional affairs at EPA under Obama.

"There was a big concern going into his confirmation that he was going to try to undermine the endangerment finding," Brown said. "He let them believe that he thought climate change was settled and the question was what do you do about it."

Then things changed.

Over the following weeks, newly minted officials began expressing views on climate change that sharply diverged from the scientific mainstream's determination that human activity is largely driving global temperature increases. Some even seemed to question the role that carbon dioxide plays in the greenhouse effect, observed by scientists for more than a century.

In defiance of decades of research to the contrary, Pruitt and Energy Secretary Rick Perry have both questioned humans' role in warming and whether climate science is "settled." Now both officials are preparing to mount formal challenges to climate change research through "red team, blue team" exercises.

Many climate advocates see it as a bait and switch.

"It certainly seemed like Pruitt was planning not to take on the endangerment finding and climate science based on what he was saying," said former EPA air chief Janet McCabe.

Pruitt still hasn't said whether he will fight the endangerment finding — EPA's legal finding that carbon dioxide is dangerous to public health and must be regulated. But he is moving ahead with plans to debate human effects on climate change.

The White House, during this period, has declined to explain the president's view about rising temperatures and if he accepts the scientific findings related to people's impacts on the climate([Climatewire](#), June 23).

Blame humans, then the ocean

When Pruitt testified before senators early this year, he acknowledged man-made climate change but said human impacts couldn't be measured precisely and required more debate. He called his personal opinion on the matter "immaterial." The law dictates how EPA handles greenhouse gases, he said ([Climatewire](#), Jan. 19).

Other nominees, including those now running the Interior and State departments, hewed closely to that argument. Perry said natural and man-made sources cause climate change ([Climatewire](#), Jan. 20).

During the confirmation process, Sherpas are assigned to work with nominees, to pore through their records and guide them against responding to questions about particular policies they might support. Senate confirmation hearings are like cross-examinations. Nominees talk about their background and answer questions while committing as little as possible to future action.

Pruitt hadn't said much publicly about climate change as Oklahoma attorney general, aside from a jointly authored op-ed ([Climatewire](#), Dec. 8, 2016). When he went before the Senate Environment and Public Works Committee, he neatly navigated around questions about climate change, staying largely in line with his previous comments.

Perry, during his hearing, took a step back from his previous views that climate change is a "contrived, phony mess," saying some effects are naturally occurring and others are man-made ([Climatewire](#), Jan. 20).

Secretary of State Rex Tillerson said during his hearing that climate change is real, but the ability to predict the effects of greenhouse gases is "very limited." Interior Secretary Ryan Zinke told senators that he did not believe climate change was a hoax.

Now, fast forward: Pruitt, Perry and Zinke have veered far from their confirmation comments since taking the helms at their agencies.

'Powerful unsettling effect'

Pruitt and Perry have both said they doubt whether carbon dioxide causes climate change, a finding that is foundational to studies of the greenhouse effect. During an interview on CNBC's "Squawk Box" in May, Pruitt stated that humans were not the "primary contributor" to climate change. Those comments mark a turning point for the administrator and how he talks about climate change, though he maintains that his statements have not changed since his confirmation hearing.

A month later, in an appearance on the same CNBC program, Perry echoed Pruitt's statements. Humans are not to blame, he said. Instead, the "control knob" for climate change is "most likely" ocean waters and the environment, Perry asserted. Both men have also attacked the idea that climate science is "settled."

Zinke, questioned last month by Sen. Al Franken (D-Minn.), punted on questions about climate science.

He said scientists cannot "predict with certainty" how much warming will occur and said "there isn't a model that exists today that can predict today's weather given all the data."

Gavin Schmidt, director of the NASA Goddard Institute for Space Studies, pointed out that even gravity and other widely accepted scientific concepts hold uncertainties, from a technical perspective.

"But for practical purposes, the value is known precisely enough to be useful. Nothing is known with absolute certainty," Schmidt said.

Climate science is similar, he added, in that uncertainties exist around specific details, like ocean surface temperatures. But overall warming trends are strongly supported by numerous data sets. So, practically speaking, the climate data are useful.

One reason people perceive great uncertainty in climate science is because communication about global warming tends to focus on changing details, rather than the bigger picture of what the data are showing, he said.

"The big picture is like an edifice, it's a skyscraper that was built on years of work. The things we are arguing about is the color scheme on the 14th floor," Schmidt said.

Edward Maibach, director of the Center for Climate Change Communication at George Mason University, said the diverging comments from Cabinet members could sway people who recognize that climate change is happening but aren't committed to it as fact.

He said Pruitt's program to question science is "a very clever communication tactic to reinforce what he wants Americans to believe, which is that the science isn't settled."

Yale University's Program on Climate Change Communication found that most Americans, 58 percent, acknowledge man-made climate change. But they don't have strong "belief certainty," Maibach said.

"Things like this can have a very powerful unsettling effect on people who are already uncertain to begin with," he said.

Court Rejects Environmentalists' Push To Block EPA Chlorpyrifos Reversal **Inside EPA**

A federal appeals court has rejected an environmentalist lawsuit seeking to block EPA Administrator Scott Pruitt's reversal of an Obama administration plan to ban the widely-used pesticide chlorpyrifos, ordering petitioners to administratively appeal the agency's action, though environmentalists have another pending suit seeking to block the action on the merits.

In a July 18 order a three-judge panel of the U.S. Court of Appeals for the 9th Circuit ruled in *Pesticide Action Network North America (PANNA) and the Natural Resources Defense Council (NRDC) v. EPA* to reject environmentalists' mandamus request seeking to block Pruitt's March 29 order denying their petition to ban use of the substance on food and reversing an Obama EPA proposed rule that would have granted that request. *Relevant documents are available on InsideEPA.com. (Doc. ID: 203636)*

The court said the environmentalists' request was premature. "PANNA's complaints arrive at our doorstep too soon," the panel says. "Although we previously condemned EPA's 'egregious' delay' in responding to PANNA's petition, the agency has now complied with our orders by issuing a final response to the petition."

The court also notes that the lawsuit environmentalists' filed in 2014, which won a writ of mandamus ordering EPA to respond to advocates' 2007 petition for a ban, addressed the timing rather than the substance of the agency's handling of advocates' long-standing push for a ban.

"Now that EPA has issued its denial, substantive objections must first be made through the administrative process mandated by statute," says the order written by Judges Diarmuid O'Scannlain, A. Wallace Tashima, and M. Margaret McKeown.

Environmentalists who have been pressing EPA for years to ban chlorpyrifos to protect against neurodevelopmental risks to children have pursued two lawsuits seeking to block Pruitt's March 29 order denying an environmentalist petition to ban use of the substance on food and reversing an Obama EPA proposed rule that would have granted that request.

In the order, Pruitt cited uncertainty in scientific data on the risks of chlorpyrifos and said EPA would continue to assess risks of chlorpyrifos as part of its Federal Insecticide, Fungicide and Rodenticide Act registration review scheduled for completion by October 2022.

The instant suit sought further mandamus relief from the court that had previously required EPA to "take final action" on environmentalists' petition by March 31, asking the court to force EPA to issue the ban that had been proposed by the Obama EPA.

The other suit, *League of United Latin American Citizens (LULAC) et al., v. Pruitt*, challenges Pruitt's petition denial on the merits. Groups including PANNA, NRDC and Farmworker Justice June 5 also challenged Pruitt's order in a separate lawsuit in the 9th Circuit. A half dozen Democratic state attorneys general (AGs)— including those from New York, Maryland, Massachusetts, Vermont, Washington, and the District of Columbia have sought to intervene in the case, arguing that Pruitt's reversal allows risks to children to persist and violates federal law.

In a July 17 filing in the *LULAC* case, EPA does not oppose the states' request to intervene provided the states seek identical relief as environmentalist petitioners. But EPA suggests it will fault the states' standing to sue should the AGs seek different relief.

"At this time, it is unclear whether Proposed Intervenor are seeking relief different from Petitioners, such that they would have to demonstrate their own Article III standing," EPA says. "To the extent Proposed Intervenor do not seek different relief, EPA does not oppose the Motion to Intervene. But EPA reserves the right to challenge Proposed Intervenor's standing at a later date if they ultimately seek relief different from Petitioners." -- *Dave Reynolds*

House Panel's Approval Of EPA Spending Bill Offers Prelude To Further Talks Inside EPA

The House Appropriations Committee has approved an EPA spending bill for fiscal year 2018 that provides the agency with significantly more than what the Trump administration had sought though the bill's passage offers a prelude to further negotiations among both House and Senate lawmakers over funding levels and policy riders.

During the committee's July 18 markup of the Interior and environment appropriations bill, Democrats rejected the measure in its current form, signaling they plan to fight to further increase funding and remove policy riders.

And Republican appropriators indicated they remain open to adding funding for some programs that enjoy bipartisan support -- assuming they can win increased funding levels for EPA and other agencies during upcoming budget discussions.

The committee voted 30-21 -- along party lines -- to send the bill to the House floor, during a markup that highlighted questions over the ultimate fate of the bill in the House and in negotiations with the Senate and White House over final spending levels for fiscal year 2018.

"This funding level will ensure the agency is able to fulfill its core duties while streamlining the agency and reshaping its workforce," said Appropriations Committee Chairman Rodney Frelinghuysen (R-NJ).

But Rep. Ken Calvert (R-CA), chairman of the Interior appropriations subcommittee, said several times that he remained hopeful that a pending broader budget deal on spending levels across the federal government might free up money to increase spending for specific, popular programs.

The bill approved by the committee provides \$7.5 billion for EPA, a 6.5 percent decrease from FY17. While the bill cuts the agency less than the massive 31 percent cut proposed by the Trump administration, the reduction of \$528 million from FY17 levels is drawing harsh fire from Democrats after years of budget decreases for the agency.

And it comes amid report that EPA's spending bill is not expected to be part of an initial group of spending bills, known as a "minibus," scheduled for possible House approval next week.

Frelinghuysen during his remarks praised parts of the bill, including funding for Superfund site cleanups, as well as an array of policy riders he said reflect the need to "cut job killing red tape."

And Calvert in his opening remarks noted that the bill supports efforts by the Trump administration to "begin reshaping the workforce at EPA."

But Rep. Nita Lowey (D-NY), the committee's ranking Democrat, underscored the minority's hostility to the legislation, asserting the bill would "cripple the agency" and that it risks a government shutdown by spurning Democratic lawmakers.

"Democrats cannot support a bill that threatens the health of our environment," she said.

And Rep. Betty McCollum (D-MN), the ranking Democrat on the Interior subcommittee, likewise called the legislation a "partisan bill that will not become law in its current form."

She cited concerns over the proposed cuts on an agency that already has 2000 fewer staff than in 2010.

The dynamic offers additional evidence that Democrats will seek to exploit perennial disunity within the Republican caucus on spending and other legislation that has historically left GOP leaders dependent on at least some level of Democratic support to approve spending bills.

Those divisions may boost Democrats' leverage to demand further concessions in the legislation -- including removal of at least some riders or addition of additional funding in exchange for providing needed votes.

The proceeding comes weeks after a critical mass of Senate Democrats already pledged in a letter to Senate appropriators to block inclusion of policy riders in spending bills. But meeting the demands of Democrats also runs counter to pressure from conservatives for even deeper cuts to EPA than in the

current House bill.

A preview of likely demands surfaced as Democrats during the July 18 markup demanded a roll call vote on several amendments, including an unsuccessful amendment from McCollum seeking to strip 16 policy riders from the bill.

A few of the most high-profile riders include a delay of EPA's ozone standard, language authorizing quick withdrawal of the Waters of the U.S. rule, and language blocking financial assurances requirements under Superfund.

At the same time, a second, and more collegial dynamic was also evident at the hearing, with Republican appropriators open to sweetening the bill by adding additional money for popular programs that appeal to members of both parties.

"I am going to work with you, to get to a better place at the end of this process," Calvert said, for example, in response to an amendment subsequently withdrawn by Rep. Jeff Fortenberry (R-NE) seeking more money for the land and water conservation fund.

Calvert similarly in response to a proposed amendment from Rep. Marcy Kaptur (D-OH) -- seeking to add \$16 million to EPA's safe and sustainable water resources research account -- he said he would "like to revisit" the issue if the pending budget deal is reached.

And the route to similar discussions appeared open in the wake of an amendment from Rep. David Price (D-NC) to bring EPA research funding in the bill back up to FY17 levels; a proposal from Henry Cuellar (D-TX) to boost funding in the bill for border environment programs; and a proposed amendment from Kaptur and Rep. Debbie Wasserman Schultz (D-FL) to restore \$250 million in funding to the clean water state revolving fund.

Still, the committee rejected numerous Democratic amendments at the markup either by voice or recorded vote. They included an amendment from Rep. Mike Quigley (D-IL), rejected 31-29, that would have explicitly barred any use of funds to close EPA regional offices; an amendment from Rep. Matt Cartwright (D-PA) that would have removed bill language delaying implementation of the 2015 ozone standard; another Cartwright amendment, rejected 21-29, that would have instructed agencies to prepare for climate impacts.

After a discussion with Calvert, McCollum withdrew an amendment that would have codified report language imposing restrictions on reprogramming of funds at EPA, the Department of Interior and other agencies. And Rep. Chellie Pingree (D-ME) withdrew a proposed change to report language accompanying the bill that she said would admonish Administrator Scott Pruitt to follow the Administrative Procedure Act, citing the recent federal court rejection of his effort to delay an oil and gas methane rule by 90 days.

The final approval of the legislation late July 18 came after approval of a manager's amendment that makes "noncontroversial" changes to the legislation, as well as the addition of amendments including: language modifying bill language requiring use of domestic iron and steel in water infrastructure projects, and language limiting funds for approval of turbines less than 24 nautical miles from Maryland's shore. -- *Doug Obey*

EPA: Wanted: Special agents to protect agency chief Greenwire

U.S. EPA is on the lookout for special agents to help protect Administrator Scott Pruitt.

In a job notice posted online, the agency said it wanted to hire a special agent to work for the Protection Services Detail, part of the agency's Office of Criminal Enforcement, Forensics and Training.

"Spend the majority of your time providing protective, personal, and physical security for the Administrator of the U.S. Environmental Protection Agency (USEPA). These activities include, but are not limited to: assisting with complex protective advances and movements, motorcade logistics, physical security, and site security," said the notice.

In addition, the newly hired special agent would conduct "complex criminal investigations of individuals or groups who may present a physical danger to the protectee and recommend courses of enforcement action to the appropriate law enforcement entity."

Other duties include preparing operational plans for enforcement actions, such as serving search warrants and undercover operations, as well as writing up investigative reports.

The position's annual salary range runs from \$99,650 to \$154,042. In addition, the federal job's pay scale and grade is General Schedule 12 to 13 and is based in Washington.

The job notice comes as Pruitt has boosted his protective detail for around-the-clock security, according to internal EPA emails and budget documents. Former EPA officials say that is a significant ramp-up in security compared with past administrators who had door-to-door protection from special agents.

Documents obtained by E&E News under the Freedom of Information Act show that as a result of that greater protection, EPA has spent substantially more on Pruitt's security during his first months in office compared with his predecessors. Overall, EPA spent \$832,735.40 on compensation and travel costs for Pruitt's protection detail for about his first quarter running the agency (Greenwire, July 5).

Hiring more agents to man Pruitt's 24/7 security detail could help the stretched contingent of enforcement officers. Former EPA special agents say agents from the agency's regional offices would have to be called in to provide around-the-clock security for Pruitt unless more agents are hired for the administrator's detail.

EPA: Pruitt spent nearly half this spring in Okla. Greenwire

U.S. EPA chief Scott Pruitt spent nearly half of March, April and May in his home state of Oklahoma, according to copies of his travel records.

The former state attorney general spent 43 of 92 days in the Sooner State. The time was spent traveling the state, holding meetings and often meeting with oil and gas industry representatives. He then visited his family in Tulsa on weekends.

The frequent trips have sparked rumors of a future statewide office bid and accusations of building political connections on taxpayer dollars.

Former officials say the travel is unusual.

"The American people aren't paying taxes for part-time Cabinet officials," said Liz Purchia Gannon, an Obama-era EPA spokeswoman under former EPA head Gina McCarthy.

Pruitt's airfare tab totaled more than \$12,000, not including travel and lodging for staff and security, according to the Environmental Integrity Project.

EPA says Pruitt works hard and pays for trips home to see his family. According to the records, it is unclear how many trips Pruitt paid for (Flitter/Volcovici, [Reuters](#), July 24). — NB

ACE

AIR POLLUTION: EPA downplays audit that showed problems with ozone data E&E News PM

U.S. EPA officials are further downplaying concerns raised earlier this year by the agency's inspector general about the accuracy of ground-level ozone monitoring data crucial to the compliance process.

In a February "[management alert](#)," Inspector General Arthur Elkins reported that Georgia and South Carolina didn't always follow EPA guidelines for processing the data.

That finding was accompanied by warnings of discrepancies around the country between real-time ozone monitoring data from 2012 through 2014 and what was reported to EPA's Air Quality System, which is used to decide whether particular areas are meeting the relevant standards ([Greenwire](#), Feb. 6).

In a [response](#) issued days later, acting EPA air chief Sarah Dunham agreed that fixes were needed but said that the agency's own analysis of 2012-2015 numbers found 2 percent of the data "showed differences that may represent a legitimate concern in terms of quality assurance practices."

In an unsigned [update](#) released today that also tapped 2016 ozone monitoring figures, the agency concludes that the "difference rate" was even smaller and thus "shows even less cause for potential concern from a data quality perspective compared to the original analysis."

After lowering the ground-level ozone standard to 70 parts per billion in October 2015, EPA had been scheduled to make the attainment designations this October. Last month, however, Administrator Scott Pruitt pushed back that deadline by a year, saying the agency needs more information.

Environmental and public health groups challenged the decision in court earlier this month; the House, meanwhile, approved [H.R. 806](#), a bill that would delay the attainment process until 2025 ([E&E Daily](#), July 19). A comparable Senate bill, [S. 263](#), is awaiting committee action.

POLITICS: Contenders for Pruitt's 'red team' say it would be 'a hoot' E&E Daily

U.S. EPA chief Scott Pruitt and his colleagues won't have any trouble finding scientists keen on poking holes in mainstream views about climate change.

Pruitt and other members of the Trump administration have proposed launching a so-called red-team effort to give scientists in the minority the chance to take shots at the prevailing views about how much human activity contributes to climate change.

How that effort shapes up remains to be seen. Pruitt has suggested televised sparring between the two

sides, and he's reportedly looking to hire a former Obama administration official to lead the effort.

Scientists who feel they've been marginalized for years have plenty of ideas for the new administration, and some — feeling newly empowered under the Trump administration — are eager to join the red team.

"I'd be interested," said John Christy, a climate scientist at the University of Alabama in Huntsville.

Christy has been pushing for a red-team review of climate science for years. He pointed to his testimony before Congress in 2012, when he said taxpayer funds should be used for "well-credentialed scientists to produce an assessment that expresses legitimate, alternative hypotheses that have been (in their view) marginalized, misrepresented or ignored" in previous government-funded climate reports.

Count Judith Curry as another who would join the effort. She's a climatologist and former professor at the Georgia Institute of Technology.

"If the powers that be want me involved, I would be happy to help," Curry said last week in an interview. She has been a vocal supporter of the red-team concept.

Pruitt is considering hiring former Obama administration energy official Steven Koonin to oversee the effort, according to Myron Ebell, who led the EPA transition team for the Trump administration ([*Greenwire*](#), July 24).

Koonin's April op-ed in *The Wall Street Journal* calling for climate red teams made waves in the climate world and got the attention of Pruitt, who discussed the article with Koonin in his office that month. Pruitt told Reuters that he "took the opportunity" to talk about the article during an unrelated meeting. He called Koonin's piece "exciting."

Koonin declined to comment on whether he's in talks with Pruitt about leading such an effort, but some see him as a logical candidate.

"He would be, I think, the ideal person to coordinate this and put the thing together," said Curry. "I would feel very comfortable about this whole thing if he had some role."

"He's a straight shooter, and he's got the credibility because of his position in the Obama administration," she said. "He seems like a reasonably objective person to people on both sides."

The Trump administration has reached out to the Heartland Institute, a conservative think tank, for ideas about the initiative, said H. Sterling Burnett, a Heartland research fellow on environmental policy.

Burnett suggested some potential candidates for the red team, a roster he called "climate realists." They include Christy; William Happer, a Princeton University physics professor and a rumored contender to be Trump's science adviser; David Legates of the University of Delaware; and Patrick Michaels, director of the Center for the Study of Science at the Cato Institute.

Christy offered several names, including his colleague at the University of Alabama, Roy Spencer; Richard Lindzen from the Massachusetts Institute of Technology; and Roger Pielke Sr., a senior research scientist at the Cooperative Institute for Research in Environmental Sciences in Colorado.

While picking members of the red team might be easy, the administration might have a tougher time finding participants for the so-called blue team.

Many climate scientists have complained that the exercise presents a trap for those who see the

science as settled. Participating would lend the minority of researchers who question mainstream climate science a high-profile platform; refusing to take part would allow critics to say the climate scientists are hiding something (*Climatewire*, July 13).

So how will this work?

Proponents of the red-team approach have plenty of ideas about how it could happen.

Pruitt's suggestion that the debates could be televised garnered a lot of attention, but many climate researchers on both sides have slammed that as a bad idea. They say TV would require complex concepts to be too distilled.

A televised debate "would be a fiasco," Curry said.

Instead, some want to see a series of reports, congressional hearings, or even a website where theories are posted and outsiders can take aim when they see problems.

Curry suggested a series of reports followed by congressional hearings. Those could look at a range of topics like the social cost of carbon or impact issues like sea-level rise or extreme weather.

"You can imagine any number of topics that would be relevant, but the policymakers have to pick which ones they care about," she said.

Ebell, who is at the conservative Competitive Enterprise Institute, pointed to the "Team B" effort in the 1970s under then-CIA Director George H.W. Bush to assess the Soviet Union's capabilities.

"They took the same intel that the CIA was using, and they gave a different analysis of it," Ebell said. "That's one way to do it."

Ebell said if the effort is housed at EPA, it would likely be in the agency's Office of Research and Development. Other offices could also take the lead, like NOAA or the White House Office of Science and Technology Policy, he said.

Christy suggested that topics like the physical science of climate, the benefits of increased carbon dioxide or the value of affordable energy to poor people could be up for discussion.

"In this day and age, I would guess you'd do it with reports, probably electronically," Christy said. He suggested a website in which the red team presents its case for the evidence and outsiders take their best shot at its findings.

"It would be a hoot and pretty complicated to manage," he said.

David Gelernter, a professor of computer science at Yale University who has also been rumored as a possible nominee to lead the White House science office, said he's "hoped for years that we could organize a head-to-head presentation of arguments by some strong man-made climate change people and strong anti-[man-made climate change] thinkers."

He said the effort would be like "a war game" in a sense.

He pitched having policymakers and the public and press hear presentations, "say, an hour from each side," with another hour or so to ask questions. "This brief session wouldn't settle anything but would make it absolutely clear to everyone, I think, that we need more such sessions — we need a month of

them, or half a year of them," he said.

Gelernter sees the dialogue as urgent.

"We need to have this debate now, this afternoon. It's got to happen, and it will, in some form — I hope in a form that builds clarity and not just rancor," he said.

EPA spokeswoman Liz Bowman didn't respond to a request for comment about how the effort is shaping up. She told E&E News earlier this month: "I understand everyone is very interested in the Red Team/Blue Team, but please stay tuned for more information."

EPA Eyes Former Obama DOE Official To Run Climate Science Review Inside EPA

The Trump EPA is considering hiring Steven Koonin, the former Department of Energy (DOE) science adviser who has raised questions about the precise extent of the human role in climate change, to run the agency's proposed "red-team, blue-team" climate science review, according to a knowledgeable source.

Should the agency follow through, a formal role for Koonin on the issue would not be unexpected, as the former Obama administration official has publicly called for the review and both EPA Administrator Scott Pruitt and Energy Secretary Rick Perry have cited his call to justify their proposed review.

Koonin, in an op-ed in the *Wall Street Journal* earlier this year, proposed the review as a "concrete step" toward "evidence based policymaking" that could combat "politicization of science." He also drew a parallel with approaches used by the national security community to "test assumptions" and understand risks and uncertainty.

Koonin could also be under consideration for other roles, too, after Pruitt acknowledged in a recent *Reuters* interview that during a meeting with Koonin they "focused on some other things."

Other sources also indicated more generally that Koonin has been under consideration for some kind of a role at the agency.

EPA "would hire him or contract with him to be in charge of the whole [red-team, blue-team] process," says the knowledgeable source, regarding Koonin's possible climate science role.

Pruitt indicated earlier this month that he is considering launching the "red-team, blue-team" exercise, saying in the *Reuters* interview that he may seek to televise the event.

While he said the exercise was not intended to target EPA's greenhouse gas endangerment finding, he said there could be a legal basis to challenge the finding, though he would rather Congress address the issue.

The idea of a climate science review is anathema to environmental groups and many climate experts who fear it would be used to exaggerate lingering questions about the extent and timing of human influence on climate change in ways that derail needed concrete steps to combat it.

At the same time, others have suggested that such an exercise, "properly done," could build public consensus. David Bookbinder, a former Sierra Club lawyer and now counsel at the libertarian Niskanen

Center, told *Inside EPA* recently that his group has no concerns over Pruitt's plan, if the panel is appropriately balanced across scientific perspectives.

"Bring it on," he said. "We should not be afraid of additional rigorous review. We believe it'll lead to the same conclusion."

But Bookbinder also warned that he may sue the administration if it does not ensure balanced representation on the panel in compliance with the Federal Advisory Committee Act (FACA), though he acknowledges that the law is difficult to enforce.

Should the red-team, blue-team exercise "degenerate into some sort of kangaroo court farce, we'd certainly consider" a lawsuit under FACA authority, said Bookbinder, who previously sued the Bush administration under FACA seeking to win documents on then-Vice President Dick Cheney's energy task force.

A formal role for Koonin could also provide a talking point for the Trump administration to argue the proposed climate science effort is politically even-handed, in that Koonin served as a science adviser to DOE from 2009-2011 -- during the Obama administration.

Koonin is not a climatologist but a technology expert, and his stint at DOE as science adviser included a role as principle author of DOE's first Quadrennial Technology Review, which laid out a roadmap for future technology research and development activities at the department.

Koonin currently sits on DOE's Secretary of Energy Advisory Board, and is the founding director of the Center for Urban Science and Progress at New York University. -- *Doug Obey*

Schnare, Former Transition Official, On His Departure, EPA Climate Science Review *Inside EPA*

Editor's Note: *David Schnare, the former EPA transition official who wrote this article, left the agency earlier this year over concerns about infighting among administration appointees and Administrator Scott Pruitt's alleged lack of engagement. In it, his first since departing the agency, he discusses his reasons for leaving and his views on EPA's upcoming climate science review. The views expressed here are his.*

It is a high honor to be asked to serve on a presidential transition team -- an even higher one to be asked to go back into an agency into a major role. The Presidential Personnel Office, with the full support of Transition Team Leader and Senior White House Advisor, Don Benton, asked me to act as, and then become permanently appointed as the Assistant Deputy Administrator, a position Administrator Pruitt described as the Chief Operating Officer for the Agency. A few days before the White House officially made that assignment, I resigned. As a 34 year-veteran of EPA, a PhD environmental scientist and attorney who retired from the Agency in 2011, President Trump's team asked me to go into the agency in a leadership role implementing the EPA transition plan. Based on discussions with the entire EPA transition team, I had drafted approximately 80% of the agency transition plan. Why resign and why explain why?

My commitment to the President and his agenda is ongoing, despite my resignation. Over 20 news organizations have asked me to spell out why I left, and previously I have not as I saw no value to President Trump in doing so. However, telling this brief tale deflates attention on my resignation and

allows attention to go to an important issue that demands attention from within and outside the Agency -- specifically, how to address the highly controversial issue of climate and the human influence on climate.

In simple terms, Mr. Pruitt and I simply never meshed.

Every agency or departmental transition team confronted two challenges: rapid implementation of the President's agenda and team-building with the career managers. The EPA transition team faced extreme antagonism by some lower level employees within the Agency and open hostility from the initial Pruitt appointments. My job was to form a working bridge between the Pruitt team and the career professionals while ensuring the President's transition plan moved forward. In the final call, I was unable achieve this mission.

Bill Ruckelshaus, the Agency's first and fifth Administrator, recently discussed why senior government officials resign, something he did twice. He explained that it comes down to a question of fundamental principles. Where the appointee is being forced to compromise his core principles, he has no choice but to resign. In my case, Mr. Pruitt and I had basic irreconcilable differences in management approach and professional ethics.

Because, in the opening weeks of his tenure, Mr. Pruitt chose not to engage closely with the senior career managers, my function was to bring time- and policy-sensitive issues to his attention and brief him on those issues. Each time, I suggested he meet with the appropriate career managers so as to ensure he had detailed answers to any questions he might have. He rarely did so, relying instead on the extremely short briefs I provided at his morning staff meetings.

This problem came to a head at a meeting in which I gave him notice that a delegated EPA authority was going to be used by a career manager on a sensitive issue, an action required by law. I advised him on the Agency's options and he rejected them all. Mr. Pruitt then ordered a different course of action, one I firmly believe is not permitted under law. He left it to me or his chief of staff to direct the career staff to implement the action. In my view, this violated our oaths of office and placed the career staff in an untenable position -- one from which I could not extract them, whether I stayed or resigned. The next week I was ordered to no longer meet with Mr. Pruitt on policy issues, having already been directed to not participate in either personnel or budget matters. Thus, I could not do the job the President asked me to do. Under those conditions, there was but one choice and I made it.

Revisiting Climate Science

In my commitment to President Trump's agenda, I have identified a structural problem that does not seem to be understood by EPA appointees or White House policy staff. I came to *Inside EPA* to highlight this problem as it is the loudest megaphone into the Agency and within the environmental policy community. It needs to be raised now and strongly, or the President will lose the opportunity to carry out one of his key election promises: reexamination of climate science and how that science informs policy-making that has vast economic and political implications.

There are three problems involving climate science that many others within the Administration do not understand: (i) The law does not assign responsibility for assessing the significance of greenhouse gas emissions to EPA; (ii) the law does not permit the federal government to assume the science is settled; and, (iii) the Red team -- Blue team concept simply does not apply within the scientific community. I opt for the Red, White and Blue team approach, with a heavy dash of Karl Popper thrown in.

Who is responsible for assessing climate science?

The Subcommittee on Global Change Research (GCRC) of the Committee on Environment, Natural Resources, and Sustainability of the National Science and Technology Council was established to plan

and coordinate the U.S. Global Change Research Program (USGCRP), as described in the Global Change Research Act of 1990 (P.L. 101-606). The USGCRP provides for development and coordination of a comprehensive and integrated research program, which assesses, predicts and responds to human-induced and natural processes of global change.¹ Among its eleven functions is the duty to conduct a periodic scientific assessment which addresses the following:

- (1) integrates, evaluates, and interprets the findings of the Program and discusses the scientific uncertainties associated with such findings;
- (2) analyzes the effects of global change on the natural environment, agriculture, energy production and use, land and water resources, transportation, human health and welfare, human social systems, and biological diversity; and
- (3) analyzes current trends in global change, both human-induced and natural, and projects major trends for the subsequent 25 to 100 years.

The staff at the Office of Science and Technology Policy are currently engaged in writing the statutorily mandated 2017 “National Climate Assessment.” This is a legacy of the Obama administration, one being done as quickly and quietly as possible by the Obama holdovers ensconced at OSTP. The Assessment draws on the science as discussed in another statutorily mandated report, the “Research Plan.” Both the Assessment (currently in draft) and the Research Plan parrot an alarmist view of the “settled” science. The Research Plan was published days before President Trump took office. Both the Research Plan and the Assessment need to go back to ground zero and be redone, and a properly appointed OSTP leadership and staff have all the authority and tools needed to reexamine the science.

How do we know a redux is needed? The National Academy of Science (well known to lean toward climate alarmism), said so.² Among many recommendations, the Academy stated a need for “expanding the discussion of specific topic areas, to better reflect the full breadth of literature and understanding of the subject” and “Wherever possible, figures depicting observed trends should indicate the statistical significance of those trends, or confidence intervals.” A close reading of the NAS review indicates the GCRC effort reeks of failure to employ the basics of science as encapsulated in the Information Quality Act (IQA) guidelines that apply to federal agencies, including the White House offices.

EPA provides but one of fourteen members to GCRC and its representative is not currently the chairman of the committee nor does it provide the executive director. OSTP and its GCRC have the authority and resources to conduct a reexamination of the science. EPA can play, but it isn’t in charge and doesn’t have the authority under the Global Change Research Act of 1990 to unilaterally undertake this effort.

Red Team -- Blue Team Silliness.

The latest riff on climate has been the suggestion of using a Red team -- Blue team approach. As eminent a scientist as Steven Koonin, a theoretical physicist who served as Obama’s undersecretary for science at the Energy Department, has endorsed the idea. He has been accused of setting up a strawman argument regarding whether climate science is “settled.”³ Mr. Pruitt has indicated he wants Dr. Koonin to be the lead in a Red Team -- Blue Team effort. I can understand that an attorney like Mr. Pruitt might be comfortable with an adversarial process; or that legislators (read politicians) would think this an idea worthy of use. It’s an idea that grows out of ignorance of the scientific process or science itself.

Red teaming is a practice coming out of the national security community. According to them, it is the practice of viewing a problem from an adversary or competitor’s perspective. Those of us who have served in the military understand the value of having one’s strategic and tactical approaches challenged

by opposing forces. That, however, is not how science works. Science is supposed to be done by individuals “disinterested” in the outcome of their observations. It is not supposed to be a political blood sport.

Science consists of making observations and attempting to “falsify” hypotheses based on observation. Where there are conflicting hypotheses, scientists test each. Often, each is falsified and each hypothesis has to be tossed. Lately, “science” has foundered on the rocks of academic imperialism. There is less of a division between “alarmists” and “skeptics” than between those whose future (read funding) is risked by climate skepticism (the alarmists) and those who need not worry about such support (the skeptics). The risk of loss of funding, and consequently loss of academic promotion and standing, is real and imposing.

Non-transparency in academic science has exacerbated this problem. When the public, and especially the technologically and scientifically literate public, can’t look deeply into the practices of scientists, there is no pressure to maintain the ethics of science.

What is needed is the convening of a scientific reevaluation of climate science, done in the most public fashion. As I discussed with senior EPA leadership before I left, webcasting a detailed discussion of critical issues, with the opportunity for viewers to pose appropriate technical questions during the discussion, would allow for the transparency and the depth needed to ensure a full rendering of our understanding of greenhouse gases on climate. It would also educate the 90 percent of U.S. citizens who admit they don’t know enough about climate change to have a view on the subject.

One additional element would be needed. All points of view and kinds of expertise need to be at the table. In the climate community, this has been nearly impossible to achieve, the animosity and professional fear within the community being what it is. A simple solution is to require any federal grantee or grant applicant to agree to participate in these sessions. You want to feed at the federal trough, you have to be willing to engage with the federal government processes, including these kinds of scientific enterprises.

What about Mr. Pruitt’s idea of televising a climate debate? It’s an extension of failure to understand how science works. Structured debates are too limiting. If televised, they are too short. If a continuing loop of “Red Team argument,” then “Blue Team argument,” it is inefficient. The depth needed to be examined cannot be reached in a televised debate. It will in a scientific conclave specifically intended to reach such depths and provide for discussion rather than antagonistic debate.

Finally, the fundamental questions that require reconsideration in light of evolving scientific observations include the following and should be the starting point for a full redraft of the Climate Science Special Report:

What empirical data (a) characterize climate conditions, changes in those conditions and normal variability in those conditions; and, (b) meet IQA criteria for quality, objectivity, utility and integrity?

What do IQA-qualified data tell us about how the climate has changed?

Using only IQA-qualified empirical data, (a) how sensitive is climate to GHGs, (b) how much of that sensitivity is attributable to human activity, and (c) what is the utility of these data as the basis for policy-making?

What methods for prediction of changes in climate conditions meet criteria necessary to allow policy reliance on such forecasting, criteria such as those mandated in financial forecasting?

What IQA-qualified empirical data characterize the beneficial and harmful consequences to human health and welfare of qualified climate change forecasts?

If EPA has a role to play, it is as a member of the GCRC. On climate issues, Mr. Pruitt will best serve this nation in following the law, implementing the climate statute and relying on competent scientists to follow fundamental scientific principles. Recognizing the challenges of a very large government with many departments and agencies, now is the time for leadership from the top. The President needs to appoint a head of OSTP and he or she needs to reorganize and recommit to a proper examination of climate science. -- *David Schnare*

Endnotes

¹ See, https://www.whitehouse.gov/sites/whitehouse.gov/files/ostp/SGCR_Charter.pdf.

² See, "Review of the Draft Climate Science Special Report" at <http://dels.nas.edu/Report/Review-Draft-Climate-Science/24712>.

³ <http://time.com/3445231/climate-denier-settled-science/>.

Former EPA Transition Official Questions Pruitt's Plan For Climate Debate Inside EPA

A former Trump EPA transition team official is taking issue with EPA Administrator Scott Pruitt's plans to conduct a "red team, blue team" debate of climate change science, arguing the approach would politicize the issue, is outside of EPA's authority and would result in too shallow of a critique of mainstream findings that human-released greenhouse gases are the primary cause of global warming.

Instead, David Schnare -- the former senior transition adviser who resigned from the Trump team in March and agrees with Pruitt's questioning of the need to make radical GHG cuts -- writes in an op-ed for *Inside EPA* that the White House Office of Science & Technology Policy (OSTP) should conduct an in-depth "scientific conclave" along with an interagency committee established by the Global Change Research Act.

Schnare rebuts a plan from Pruitt to review climate science using a "red team, blue team" approach that is sometimes used in the military or private companies.

Under the plan, a "blue team" of scientists would present the most robust evidence in support of man-made climate change, while a "red team" would seek to find flaws in the arguments. The process would repeat until, in theory, consensus emerges.

Pruitt, as well as other Trump administration officials, have warmed to the idea, and Pruitt has even suggested the debates could be televised.

But Schnare in his op-ed calls the strategy "silliness," though he largely seems to take issue with Pruitt's tactics, given that he appears to broadly agree with Pruitt's claims that climate change risks have been overblown by "alarmists."

"What about Mr. Pruitt's idea of televising a climate debate?" Schnare writes. "It's an extension of failure to understand how science works. Structured debates are too limiting. If televised, they are too short. The depth needed to be examined cannot be reached in a televised debate. If will [be reached] in a

scientific conclave specifically intended to reach such depths.”

He adds that while “red teaming” is valuable in the national security community, it “is not how science works. Science is supposed to be done by individuals ‘disinterested’ in the outcome of their observations. It is not supposed to be a political blood sport.”

Schnare foresees “webcasting a detailed discussion of critical issues,” with the opportunity for participants to pose technical questions. He says this would address the “non-transparency” in current climate science, while also educating the general public that does not have a detailed understanding of climate change.

An EPA spokesman declined comment. “We don’t have anything to add at this time,” he said.

‘Irreconcilable Differences’

Schnare worked as an EPA staff attorney for 33 years. Before his stint on the Trump transition and “beachhead” teams, he was general counsel for the free-market Energy & Environment Legal Institute.

When Schnare resigned from EPA in March, he indicated he was growing increasingly frustrated with what he described as endless infighting at the agency and with an unwillingness by Pruitt to engage with him and many other “beachheaders” -- short-term employees placed at the agency by the transition to implement the administration’s policies under full-time political staff could take office.

Schnare intended to stay on at the agency -- he left with the title of assistant deputy administrator -- to take what he saw as the “last chance” for making important and substantive changes to long-standing EPA policies that he believed needed updating.

But in his recent op-ed, Schnare elaborates to some extent on the reason for his departure. He says that he and Pruitt had “irreconcilable differences in management approach and professional ethics.”

He also alludes to a meeting in which Pruitt ordered him to take an action that Schnare charges is “not permitted under law” -- though he does not describe the details of the policy at issue.

“In my view, [Pruitt’s directive] violated our oaths of office and placed the career staff in an untenable position -- one from which I could not extract them, whether I stayed or resigned,” he writes.

Afterward, he says he was ordered not to meet with Pruitt on policy issues, and had been previously told not to participate in personnel or budget matters. “Under those conditions, there was but one choice and I made it,” he writes.

‘Not Permitted Under Law’

In his op-ed, Schnare also takes issue with EPA as the venue for any reexamination of climate science, saying the agency lacks legal authority.

Instead he says that under the 1990 global change law, a 14-member interagency committee -- of which EPA is a member -- is tasked with coordinating the U.S. Global Change Research Program.

That committee and OSTP “have the authority and resources to conduct a reexamination of the science. EPA can play, but it isn’t in charge and doesn’t have the authority under the [1990 law] to unilaterally undertake this effort.”

EPA is considering hiring Steven Koonin, a former Energy Department science adviser who touted the “red team” concept in a high-profile *Wall Street Journal* op-ed, to conduct the exercise.

The idea of Pruitt's climate science review is anathema to environmental groups and many climate experts who fear it would be used to exaggerate lingering questions about the extent and timing of human influence on climate change in ways that derail needed concrete steps to combat it.

At the same time, others have suggested that such an exercise, if “properly done,” could build public consensus. David Bookbinder, a former Sierra Club lawyer and now counsel at the libertarian Niskanen Center, told Inside EPA recently that his group has no concerns over Pruitt's plan, if the panel is appropriately balanced across scientific perspectives. But he warned that it must comply with the Federal Advisory Committee Act (FACA), which requires balanced representation on such panels, or he would sue the agency. -- *Lee Logan* (llogan@iwpnews.com)

Consumer Group Offers Early Look At Strategy To Defend Vehicle GHG Rules Inside EPA

A consumer group is offering a preview of some of the arguments supporters of vehicle fuel economy and greenhouse gas standards will use to resist planned rollbacks of combined EPA and Department of Transportation (DOT) rules, submitting formal comments to DOT's deregulatory “reform” docket that tout the rules' economic benefits and the ability of automakers to comply with them.

The July 24 comments from Consumer Federation of America (CFA) come in response to DOT's broad request for input on ways to ease the burden of its regulations, pursuant to recent Trump administration executive orders instructing federal agencies to identify regulations for possible repeal and to scuttle two rules for every new regulation.

CFA combines a defense of the vehicle standards -- relying largely on consumer savings and the increasing fuel economy of new vehicle models -- with warnings that any move to significantly weaken the standards, in part to comply with the recent executive orders, would be unlawful.

“[T]he starting point for the DOT consideration of regulatory reform and relaxation must be a recognition of the remarkable benefits that the fuel economy standards have provided for consumers and the nation,” CFA says in its comments.

Even though DOT's docket is focused on regulatory review -- and not specifically on its fuel economy standards -- CFA's comments preview the kind of formal opposition Trump officials can expect as EPA re-launches a mid-term review of current GHG standards for model years 2022-2025. Those regulations are slated to be implemented in tandem with DOT's fuel economy requirements.

DOT had already been expected to begin a new rule to write fuel economy standards for those years because its statutory authority to issue standards is shorter than EPA's authority. However, reopening the EPA GHG rules is expected to give the Trump administration more of an opportunity to consider weakening the standards.

“The concept is putting the administration on notice at every opportunity we can that willy-nilly rolling back any kind of standard without a proper cost-benefit analysis is reckless,” CFA's Jack Gillis told *Inside EPA* in a July 24 interview, explaining his group's decision to use the DOT regulatory reform process as a venue to comment on the benefits of fuel economy rules. Gillis said the group will

probably refile its analysis to DOT's forthcoming fuel economy docket.

'Pocketbook Savings'

CFA's comments partially counter arguments from the auto sector that consumer preferences are dampening demand for the most fuel-efficient cars, making it harder than expected for the sector to comply with the MY 22-25 standards.

Its analysis also includes a review of trillions of dollars in "pocketbook savings" and macroeconomic benefits from fuel economy standards accumulated in the program's 40 year history. It also projects \$400 billion in future consumer savings, \$260 billion in macroeconomic benefits, and \$200 billion in environmental benefits from the program from the present through 2030. The analysis also cites projected future costs of \$125 billion, for a benefit-cost ratio of over 7 to 1.

In a separate analysis of "consumer savings and automaker progress" toward compliance with the MY25 standards, CFA focuses heavily on analysis of "all new vehicles" introduced in 2017. It cites average added costs of \$320 per vehicle for fuel economy improvements compared to \$946 in fuel savings over a five year period, or a savings of \$626.

Other talking points on automakers' ability to meet the standards include a statistic that 70 percent of "all new" vehicles introduced in 2017 would comply with DOT's rules -- if applied on an individual vehicle basis and not on a fleetwide average -- compared with 41 percent of similar vehicles in 2015. In addition, a record-breaking six vehicles already comply with the MY25 standards.

"Our analysis clearly indicates that the car companies are fully capable of meeting the [fuel economy] standards and they are able to do so with great savings for consumers," CFA says in a press release. "Rolling back the standards at this point would not only hurt America's already financially beleaguered consumers, but . . . would hamper vehicle sales and put U.S. car companies at a distinct competitive disadvantage to the Asian car companies who will meet the standards."

Consumer Preference

CFA's comments reprise ongoing arguments, offered by EPA rule defenders, that auto sector complaints over consumers' preference for larger, less-efficient vehicles are misplaced because the standards take into account different vehicle types. "For the past decade they have been attribute based, which means they better accommodate consumer preferences and afford manufacturers greater flexibility," the comments say.

The group also supplements its cost and technology claims with polling showing favorable consumer attitudes towards fuel economy. And it couples its analyses with legal warnings that DOT must tread carefully in offering any additional flexibility to the auto sector.

"Regulatory reforms that relax the burden on businesses will violate the law and well-established policy and practice if they do not achieve maximum energy savings while balanced with maximum net benefits enjoyed by consumers and the nation," the comments state.

CFA also argues that any delay or weakening of fuel economy or other regulations to comply with the so-called 2-for-1 order -- executive order 13771 -- is illegal. "Agencies that refuse to adopt or delay the release of rules that increase net benefits because they cannot find two other rules to repeal, will also violate the law and established practice," CFA writes.

"The law requires the Department of Transportation to act in the public interest, independently of other rules that might have become obsolete." -- *Doug Obey* (dobey@iwpnews.com)

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Trump's Pick For EPA Toxics Chief Draws Criticism Over Industry Ties Inside EPA

President Donald Trump's nomination of Michael Dourson, a risk assessor who left the agency in the 1990s, to be the agency's next toxics chief is drawing criticism from environmentalists, who charge he is the latest nominee for the office with close industry connections that raise doubts about implementation of the new Toxic Substances Control Act (TSCA).

"Unfortunately, this nomination fits the clear pattern of the Trump Administration in appointing individuals to positions for which they have significant conflicts of interest," the Environmental Defense Fund's Lead Senior Scientist Richard Denison says in a July 18 blog post.

"Dr. Dourson has extensive, longstanding ties to the chemical industry (as well as earlier ties to the tobacco industry). He also has a history of failing to appropriately address his conflicts of interest," he adds.

"If his track record is any indication, Dr. Dourson's nomination threatens to move us further away from health-protective implementation of the new TSCA."

Such concerns will almost certainly be echoed during Dourson's confirmation hearings given that some key Democrats have already raised similar concerns over chemical industry influence in the development of EPA's new TSCA rules.

But Dourson is expected to win confirmation, especially given his support from some state officials with whom he has long worked. Dourson "will do a tremendous job at EPA," says Michael Honeycutt, director of the Texas Commission on Environmental Quality's toxicology division, which has contracted with Dourson's firm on a number of peer reviews.

The White House July 19 nominated Dourson, a former EPA risk assessor, to be the assistant administrator for the Office of Chemical Safety and Pollution Prevention (OCSPP), a post that will likely require extensive risk assessment experience as the agency works to implement the new TSCA law.

In its announcement, the White House touted Dourson's accolades as a Lehman award winner from the Society of Toxicology and as a fellow of the Academy of Toxicological Sciences and Society for Risk Analysis.

Dourson served as a risk assessor at EPA from the 1980s, where he was involved with the early creation of the Integrated Risk Information System (IRIS). This influential risk analysis program develops risk estimates used in EPA decision-making, which are often cited by many states and other countries as well.

Dourson left the agency in the 1990s to form his own non-profit consulting group, Toxicology Excellence for Risk Assessment (TERA), which has since merged with the University of Cincinnati. In recent years, he sought staff management positions within EPA's research office, which were also protested by public health advocates.

Dourson has long touted his non-profit group's ability to bring together parties of different viewpoints to collaborate on peer reviews of studies or risk analyses, but critics note that many of these efforts were underwritten by industry.

In 2014, TERA's website indicated the group's government work was with the Consumer Product Safety Commission, National Institute for Occupational Safety and Health, the National Library of Medicine, Health Canada and the Texas Commission on Environmental Quality, and its industry work was with American Cleaning Institute, Amgen, American Chemistry Council (ACC), Eli Lilly and Genentech.

He also led the Alliance for Risk Assessment, a group of environmental consultants and other risk experts that crafts technical risk assessment products and services. Among its work, the alliance in 2012 agreed to a request from the Alliance for Site Closure (ASC), which advises cleanup professionals, property owners and insurance companies on strategies to assess and resolve issues stemming from contamination, to convene a panel to address several concerns related to EPA's risk assessment of trichloroethylene (TCE), as well as early agency efforts to apply the new risk values at waste sites.

Denison and other environmentalists are concerned that Dourson's ties would further cement industry influence in OCSPP, especially following the appointment of Nancy Beck, a former ACC official, as the office's political deputy.

They have already protested Beck's appointment, pointing to changes EPA made to three framework rules setting up the new program for evaluating existing TSCA chemicals last month, shortly after Beck's arrival at EPA.

"[The TSCA] legislation was able to advance even in a highly partisan Congress because all stakeholders saw reform as needed to restore public and market confidence in our broken chemical safety system. The law struck a delicate balance between public and private interests," Denison writes. "Already, however, that balance has been upset when EPA recently finalized 'framework rules' implementing the new law that skewed heavily in the chemical industry's favor."

Denison points, as one example, to the involvement of Dourson and his corporation with West Virginia's risk analysis of the chemicals that leaked into the Elk River in 2014, leaving the city of Charleston without its drinking water supply for days.

West Virginia hired Dourson's group to review the risks of the chemical's presence in drinking water. Dourson chaired the group that conducted the assessment, though he had previously worked for Dow Chemical, which produces some of the chemicals involved in the spill, Denison said.

And he notes that Dourson did not disclose that information until questioned about it at a press conference by Ken Ward Jr, a reporter with the *Charleston Gazette-Mail*.

While Dourson drew criticism from environmentalists, he is winning support from Honeycutt. "As a state risk assessor, I have known and worked with Michael for nearly two decades. While at TERA, Michael reached out to the states to offer risk assessment training and expertise, most often free of charge," he says in an email to *Inside EPA*.

Honeycutt also touts Dourson's ability to build collaborative groups. "His Alliance for Risk Assessment efforts brought together federal, state, industrial, academic, and NGO scientists to reach consensus on risk assessment issues. Michael is an internationally-recognized thought-leader in chemical risk assessment, and his diplomatic and organizational skills will serve EPA well." -- *Maria Hegstad*

D.C. Circuit Ruling Spurs Debate Over Potential EPA Species Review Fixes

Inside EPA

The appellate ruling rejecting EPA's plan to forgo interagency review of new pesticides' risks to endangered species is spurring debate over whether it could trigger revisions to the agency's review policies, with an environmentalist saying it boosts their push for more-efficient reviews but an industry source says the ruling's overall effect is limited.

The environmentalist says the split ruling issued last month by a panel of the U.S. Court of Appeals for the District of Columbia Circuit will require consultation on new as well as existing pesticide registrations, increasing federal officials' workload. The source says this underscores the need for ongoing talks between environmentalists and industry to find common ground in the long-standing effort to craft a sustainable process for species consultations.

But the industry source argues that the effect of the D.C. Circuit's June 30 ruling is more limited in its scope. The source says that the ruling narrowly pertains to the work that EPA must conduct before determining that a pesticide will not affect endangered species and so the interagency consultation environmentalists want may not be necessary.

EPA has struggled for years to comply with an Endangered Species Act (ESA) requirement to consider risks to listed species before registering pesticides. In November 2013, EPA rolled out a new inter-agency process for meeting the obligation. The Obama EPA sought to first apply the new process to existing pesticides, which it deemed more toxic.

But the D.C. Circuit in *Center for Biological Diversity (CBD) et al. v. EPA* rejected the Obama EPA's prioritization scheme and faulted the agency for attempting to "duck" the ESA consultation requirement. The court remanded EPA's registration of the insecticide cyantraniliprole for further review, but declined environmentalists' request for legal deadlines for the analysis.

EPA's prioritization "plan isn't going to work anymore now that the court has said, 'EPA you have registered new active ingredients without completing the required consultation and you have to do the consultation,'" the environmentalist says. "I think EPA is going to have to figure out how to address this [additional work] in their existing plan."

The environmentalist and some pesticide industry officials are in talks seeking to improve federal reviews of pesticides' ESA risks after several pesticide registrants, including Dow AgroSciences urged the Trump administration to scrap the so-called "interim approaches" process that Obama officials unveiled in 2013.

A CBD official says the group is still assessing how the ruling may strengthen its efforts to compel federal agencies to comply with the ESA. But given EPA Administrator Scott Pruitt's courting of industry calls for deregulation, the source says any improved process for assessing pesticides' risks is unlikely.

"Right now, my feeling is that the interim approaches are dead in the water because of" Dow's request to scrap the Obama-era process, the source says. "If industry says no to everything, I don't see a path forward at the moment."

But the industry source suggests the *CBD* ruling is not as far-reaching as environmentalists are claiming. While the court rejected the Obama-EPA's reasoning that consultations are not necessary prior to registration because new pesticides generally pose fewer risks than existing ones, the ruling does not specify the level of review that EPA must conduct on remand, the source says.

"They didn't get rid of the registration. They didn't revoke it, or put further restrictions [on it], so it's a little unclear to me" what the effect of the ruling will be, the industry source says. "The key isn't that they haven't consulted, the key is what's the level of detail or thoroughness of a 'no effect' determination that EPA is allowed to make?"

Species Consultations

The ESA requires that EPA consult with federal wildlife officials on pesticides' risks to listed species prior to registering pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), though the agency has long failed to comply with the mandate, in part because of conflicting requirements of FIFRA and the ESA.

The process includes an EPA biological evaluation, which the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service, collectively known as the services, use to craft a biological opinion of the product's potential for jeopardizing listed species before laying out reasonable and prudent alternatives that EPA must implement to protect the species.

In 2013, EPA and the services announced their new inter-agency process for complying with the ESA in pesticide registrations. But EPA has been applying the process to existing products first, arguing that those products pose greater risks than newer alternatives, and that the agency has limited resources for conducting the reviews.

The first three draft evaluations EPA completed under the interim approaches framework drew critical comments from the pesticide industry after two of the draft reviews -- issued in April 2016 of chlorpyrifos and malathion -- found the substances are likely to adversely affect 97 percent of species evaluated and 99 percent of critical habitat.

Obama EPA officials acknowledged that their process is overly conservative, but said they are working to improve it. In April, several pesticide producers, including Dow, requested that the Trump administration scrap the interim approaches, arguing that the results of initial reviews reveal an unrealistic process that will require an unwieldy amount of federal resources.

They urged the administration to halt the first three reviews -- covering organophosphate pesticides -- conducted under the process, though adopting a new approach and applying it to ongoing reviews may be difficult as EPA and wildlife management agencies are subject to court-endorsed settlements with CBD and other environmentalists to complete the reviews of the three chemicals at the heart of the industry concerns.

The environmentalist who is in the talks with some pesticide industry officials to negotiate a more efficient review process says the ruling backs those efforts, but also highlights the need for more funding for agencies to conduct the work.

The source notes that a bill seeking to renew a 2003 program that allows EPA to collect fees from pesticide registrants to cover the costs of registration reviews allows, for the first time, money to go toward ESA consultations.

The source calls the new provision a step in the right direction, but says additional funding will be needed. "This court ruling suggests that even more funding would be appropriate to keep pace" with registration decisions required under the Pesticide Registration Improvement Act the source says, adding that federal wildlife officials also needed greater resources for consultations. "This court ruling highlights the need for more funding for all three agencies."

Advancing Talks

The source also says that talks between environmentalists and industry are advancing to consider how a new federal process would address formal consultations, or the part of the process where federal wildlife officials must determine whether a pesticide is likely to jeopardize a listed species or its critical habitat.

While federal officials have likely considered how the Obama administration's interim approaches would tackle this latter stage of consultation, they have not publicly detailed that part of the process. Given that, the source says the environmentalist and industry discussions are now seeking to address this critical question.

The agencies "will need some type of guidance or road map for how to do formal consultations efficiently while still meeting their legal requirements" and using sound science, the source says. "Those talks have been underway in the agency for quite some time, but the problem from the public perspective is we don't know what those discussions look like or whether" any milestones have been reached in crafting an approach for making jeopardy determinations. -- *Dave Reynolds* (dreynolds@iwpnews.com)

HHRA

NAS Urges EPA To Create New Surveillance Program For Low-Dose Effects Inside EPA

The National Academy of Sciences (NAS) is urging EPA in a new report to set up a new surveillance program to monitor scientific literature and new studies about health effects occurring at low exposures to endocrine disrupting chemicals, in part because of concern that EPA's existing regulatory testing methods might miss these effects by not regularly testing at lower dose levels.

But whether the agency will adopt the recommendation seems in doubt given Trump administration plans to eliminate the agency's current endocrine program in fiscal year 2018.

"EPA should develop an active surveillance program focused specifically on lowdose exposures to endocrine active chemicals (EACs)]," NAS' July 18 report, "Application of Systematic Review Methods in an Overall Strategy for Evaluating Low-Dose Toxicity from Endocrine Active Chemicals" recommends.

The report adds that this program "could include regularly monitoring published research and other information sources, gathering input from stakeholders, and considering human exposure information. It might also involve data collection in collaboration with other agencies and outside parties. The surveillance program should periodically identify, scope, and prioritize potential areas of focus related to low-dose effects, such as particular chemicals and end points. Some approaches will require methods and tool development, such as automated methods for monitoring the literature."

Prospects for such a recommendation appear uncertain. It took EPA more than a decade to establish its Endocrine Disruptor Screening Program (EDSP), which is intended to screen chemicals for their potential to interact with human estrogen, androgen and thyroid hormones, after Congress mandated

creation of the program in the 1996 Food Quality Protection Act.

To date the agency has ordered EDSP tests on just one batch of chemicals, before pivoting to newer, non-animal testing methods and beginning to replace the first animal-intensive EDSP battery of assays with them in 2015. An EPA advisory panel is scheduled to review another such proposal in November.

And the Trump administration budget request for fiscal year 2018 sought to eliminate funds for EDSP, though Administrator Scott Pruitt has since indicated he hopes to "absorb" the program within the agency's pesticide office.

Asked what the report's recommendation for a new surveillance program meant for EDSP, David Dorman, who chaired the NAS committee that wrote the report, said that the panel was not asked to review EDSP and did not do so. "We weren't charged with that type of review. We were charged with putting together" a general strategy to evaluate EACs' low dose effects.

The report briefly outlines EDSP's history -- though not mentioning the program -- before concluding, "[d]espite advancements and expansion of some testing protocols to include endocrine sensitive end points, concerns continue to be raised that traditional toxicity-testing practices might not include evaluation of end points relevant to endocrine disruptors, citing a trio of studies, two by members of the Endocrine Society and a third by the European Union's European Food Safety Authority.

Dorman, a toxicology professor at North Carolina State University, declined to comment on the feasibility of EPA creating a new surveillance program for EAC's effects, given the ongoing debate over how much EPA's budget will be cut from prior fiscal years.

"We tried not to be overly prescriptive to the agency," he said during a July 18 interview. "We said, 'Here's a blueprint.' . . . We tried to make broader recommendations of things" EPA might do.

NAS and other advisory committees often debate over how prescriptive to be in recommendations to EPA. While broad recommendations give the agency leeway, they also allow for the possibility that recommendations are not adopted by the agency, particularly in times of reduced resources or limited interest from agency leaders.

And while Tom Burke, EPA's last science advisor under President Barack Obama, encouraged the NAS committee to broaden its review beyond EACs to any chemicals that might cause effects at low doses, Dorman said that the committee hewed to its task, which was specific to EACs.

"Similar to other processes for the Academies, the formal statement of task guided the work," Dorman said. "At the end of the day, that's the charge to the committee."

But Dorman added that the strategy it recommends EPA adopt is a "general strategy" which could be applied to chemicals other than EACs, though the examples that the committee provides EPA were both EACs.

The report explains that EPA needs a new surveillance program "[t]o ensure adequate understanding of hazards and to inform its decisions about its regulatory toxicity-testing practices, EPA needs a general strategy for ongoing evaluation of evidence of low-dose effects from exposure to EACs. The committee proposes a strategy involving three phases: surveillance, investigation and analysis, and actions. EPA is already conducting many activities consistent with the proposed strategy, though not necessarily in the specific context of assessing low-dose exposure to EACs."

Dorman explains that once EPA has identified a potential issue through its surveillance, "EPA should formulate specific questions and then identify ways to evaluate the questions." This scoping step is very

important, Dorman stresses. He also notes that the report does not address the third step, actions, because that would delve into policy issues beyond the committee's charge.

The report identifies four approaches that EPA could use, alone or in combination, depending on the issues and questions addressed: targeted analysis of existing data, generation of new data or models, systematic review and integration of evidence. While EPA uses each of these approaches, systematic review is the newest approach being applied to environmental health information, adopted from evidence-based medicine reviews of medical literature. EPA offices and other agencies are working to develop systematic review approaches specific to their needs.

This report is the second to recommend that EPA utilize systematic review, following a similar finding in NAS' 2014 report reviewing EPA's efforts to overhaul and improve its Integrated Risk Information System (IRIS) analyses. The IRIS program has worked for several years to craft a specific systematic review approach for its use, and its former chief blamed this and related efforts for IRIS' low production of assessments in recent years.

The report includes a pair of systematic reviews the committee conducted at EPA's request, one reviewing the effects of in utero exposure to phthalates in the male reproductive tract and one asking whether developmental exposure to flame retardants known as polybrominated diphenyl ethers is associated with neurobehavioral function effects. In the latter case, the committee reviewed and then built upon a systematic review published by researchers at the University of California San Francisco, an early leader in the field.

Dorman suggested that EPA could also use tools to review others' systematic reviews, and then build upon them, rather than having to start anew with each question to make the process more efficient.

A former EPA scientist considers it notable that the report finds "systematic reviews helpful. This report used the methods and showed it worked. ... "Now that NAS has a report [and the National Toxicology Program] has a [systematic review] program, it's really hard for EPA to depart from where the practice is developing."

The source also highlights that "NAS shows that there are risks of adverse health effects at chemical exposures that are occurring right now in the population. ... The fact that NAS is saying that there is consistency [of effects] in animals and humans -- that's very important in terms of EPA's decisionmaking."

EPA requested NAS' review and crafted the charge after the Endocrine Society and other critics of regulatory toxicology raised concerns that chemicals that can disrupt the endocrine system may be less predictable by existing regulatory testing methods. They argued this occurs because such chemicals cause effects at low doses, and they may also have non-monotonic dose-response (NMDR) curves that can change direction and may not follow the predictable upward slope of many chemicals' dose-response curves that regulators are accustomed to assessing. As a result, they warned that current EPA test methods do not account for such outcomes and could incorrectly predict chemicals' risks, they say.

In response to a 2012 review of studies raising such concerns known as Vandenberg *et al*, EPA's toxics office requested what became a months-long review of the issues from EPA's research office. The result was a 2013 draft white paper that included an EPA statement about the relevancy of NMDRs, and discussed whether existing testing methodologies are health protective. The document found sufficient evidence to acknowledge that NMDRs exist, but concluded that does not require altering the existing regulatory toxicity testing regime.

But several of the Endocrine Society's members faulted the agency's draft paper for misrepresenting key studies the researchers conducted, saying this resulted in flawed conclusions. EPA sought NAS

review of the draft white paper and the NAS committee urged EPA to redo its draft white paper, after concluding that EPA's scientific review practices were too shoddy for the agency to be able to justify its conclusions.

NAS' critical review was EPA's impetus to fund a second NAS committee in 2015, which produced the most recent report. This committee was tasked with reviewing whether the EPA's chemical toxicity testing approach sufficiently addresses potential risk to human and wildlife health from exposures to low doses of endocrine active chemicals.

The latest report addresses some of this background, noting that part of the disagreement between different fields of expertise has been over definitions, such as the terms "low dose" or even "EAC." The committee seeks to clarify its conclusions and advice by providing definitions of such terms in its introduction, explaining that after reviewing many agencies' definitions, it chose to define "low dose as external or internal exposure that falls within the range estimated to occur in humans. ... If no human exposure estimates are available, low dose is defined on a case-by-case basis relative

to an explicitly specified exposure in a particular context, such as 'below the U.S. EPA Reference Dose (RfD) for chemical X' ... This definition acknowledges that a single definition cannot be used in all contexts..."

The report explains that "[t]he vast majority of relevant human exposures will fall below the levels that are used in regulatory toxicity tests," which often use as the highest dose administered to laboratory animals a maximum tolerated dose, with the lowest dose set a log order lower.

The report acknowledges that "some readers might not be comfortable with its definition because it lacks a bright line by which low dose can be defined. Defining such a bright line is not strictly based on science but rather encompasses policy decisions that were beyond the purview of the committee." --
Maria Hegstad

Environmentalists Fear Pruitt May Seek To Elevate Costs In Setting NAAQS **Inside EPA**

Environmentalists and public health advocates are concerned that EPA Administrator Scott Pruitt is seeking to consider costs when setting national ambient air quality standards (NAAQS), a move supported by many in industry but currently banned under Supreme Court precedent.

Among other things, they cite Pruitt's decision to reconsider and delay the Obama EPA's ozone NAAQS, along with possible moves by a key science advisory committee to evaluate NAAQS' costs.

Consideration of costs "is something we are really concerned about," one public health advocate says. There is always a suspicion that EPA administrators weigh costs in their decisions, but that concern is now heightened further, sources say.

The air law requires that "primary," or health-based NAAQS, be set sufficient to protect public health with an "adequate margin of safety." Secondary NAAQS are intended to protect the environment. The ozone primary and secondary NAAQS are identical, set in 2015 at 70 ppb averaged over eight hours.

Under the Clean Air Act precedent set by the high court in its 2001 unanimous holding in *Whitman v. American Trucking Associations*, authored by the late Justice Antonin Scalia, EPA may not consider

costs in setting NAAQS. The agency has relied on that precedent to insist that NAAQS be set only based on science, and that implementation costs may then be considered in implementation plans by states.

But Pruitt, in announcing a one-year implementation delay for the 2015 ozone NAAQS, raised a series of cost-related issues to justify the move, drawing attacks from environmental groups that have already sued over the action.

Pruitt first announced the move to delay designation of areas attaining or violating the NAAQS, from Oct. 1 this year to Oct. 1, 2018, in a June 6 letter to Arizona Gov. Doug Ducey (R), and EPA formalized the action in a June 28 *Federal Register* notice.

Environmentalists sued EPA July 12 over the decision, in the U.S. Court of Appeals for the District of Columbia Circuit suit *American Lung Association, et al., v. EPA, et al.*, arguing that Pruitt has provided no adequate justification for the blanket decision because the agency already has a lot of data from states on which areas are in "attainment" or "nonattainment" with the ozone standard. The Obama EPA set the limit at 70 parts per billion (ppb), tougher than the prior level of 75 ppb set in 2008 by the Bush administration.

In his letter to Ducey, Pruitt also discusses the review of the 2015 NAAQS itself, which may lead to a reconsidered standard. There "remains a host of complex issues that could undermine associated compliance efforts by states, localities and regulated entities," Pruitt writes.

"As part of the review process, the Agency is evaluating these issues primarily focusing on: fully understanding the role of background ozone levels; appropriately accounting for international transport; and, timely consideration of exceptional events demonstrations," Pruitt says.

However, background ozone levels, interstate transport of ozone, and EPA's regulatory exemption for "exceptional events" such as wildfires have not qualified previously as issues to consider in determining the health-protective level of a NAAQS, and have until now been considered implementation issues instead.

Pruitt further announced an Ozone Cooperative Compliance Task Force, which EPA sources say consists of EPA staff, and is due to report to Congress on the implementation issues associated with the ozone standard by Aug. 3.

Environmentalists worry that Pruitt's position might lead to an explicit consideration of costs, which could ultimately result in a fresh high court case on the question, or perhaps more likely an implicit cost-driven ozone NAAQS review. The same concern could also apply to the other "criteria" pollutants for which EPA has established NAAQS -- particulate matter, sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide and lead.

However, one industry source says that Pruitt "appropriately injected factors that inform the reality" of ozone regulation. Pruitt's action has to be read in the context of "this sudden desire to lower, lower, lower" NAAQS under the Obama administration, the source says.

But the public health advocate cites President Barack Obama's decision in 2011 to ditch a discretionary review of the ozone NAAQS conducted under then-EPA Administrator Lisa Jackson, in which she proposed toughening the 2008 standard of 75 ppb down to a level of 70 ppb.

The White House in justifying the move cited administrative burdens on states and industry of adopting a new standard too soon, and the decision not to finalize the rule withstood legal scrutiny.

Another factor driving environmentalists' concern is Pruitt's pending effort to select a new chair for the Clean Air Scientific Advisory Committee (CASAC), which advises EPA on setting NAAQS.

They say that who he selects to replace CASAC Chairman Ana Diez Roux, who is leaving her post in the fall, could determine the panel's focus on science and/or costs.

EPA's Science Advisory Board is now soliciting applications to replace Diez Roux from experts "who are physicians and members of the National Academy of Sciences with expertise in the health effects of air pollution," according to EPA's website.

It is also likely that under the Trump administration, CASAC will actually discharge its statutory duty to consider a wide range of effects, including "social, economic, or energy effects," of NAAQS regulations, something the committee has never done, sources say. The Obama administration insisted that this duty exists independent of the rulemakings for setting individual NAAQS, but the Trump EPA may take a different view.

Recently, EPA proposed keeping existing NAAQS for NO_x unchanged at 2010 levels, although this comports with CASAC recommendations that did not support strengthening the standard.

EPA is under consent decree deadlines with environmentalists to finalize that rule by April 6, and also to issue a proposed new SO_x NAAQS rule by May 25 and a final SO_x rule by Jan. 28, 2019.

The public health advocate also notes that the Trump EPA can simply drag out NAAQS reviews far beyond the five-year statutory deadline for reviews, which EPA has historically not met anyway. EPA last issued a particulate matter NAAQS review rule in 2012, and the Obama EPA officially initiated the next review in 2014. In December, the Obama EPA issued a review plan anticipating a final PM rule in 2022 -- five years after the statutory deadline. However, work on this review appears stalled, the advocate says.

Another clean air advocate is unsure if the cost question will arise again, or be litigated again. "I don't think we know for sure, including how long Pruitt will stick around. It sounds as if they will try to ask a reconstituted CASAC to review the economic and other costs of ozone control -- especially if Pruitt officially reconsiders the Obama ozone standard, which is where they seem to be headed."

One East Coast air regulator says, that "considering cost in setting the standard is plain and simple illegal right now. That is why they are trying to amend the Clean Air Act but they are also loading CASAC with more cost-conscious advocates and EPA also gets a lot of deference in how it interprets the science. Anything is possible."

The House has approved a bill, H.R. 806, to further delay ozone NAAQS implementation and to overhaul the NAAQS process. While the bill does not explicitly authorize consideration of costs in setting NAAQS, it does allow for the EPA administrator to consider technological feasibility of meeting standards. Given entrenched Democratic opposition and the possibility of a Senate filibuster, its prospects are doubtful, however.

Republicans including former Senate environment committee Chairman James Inhofe (R-OK) have long criticized CASAC for under-representing certain regions of the country, such as the Midwest and South, and for being biased in favor of EPA's preferred policy outcomes. Pruitt has also spoken of his desire to expand the geographical representation of EPA's various advisory committees.

An EPA spokeswoman did not respond to a request for comment by press time.

The industry source says that an explicit consideration of costs is very unlikely. However, "what you are

going to see is the injection of more critical thinking" about air quality research. And that could lead to different conclusions, the source says, for example at CASAC. -- *Stuart Parker*

EPA Proposal Backs CASAC's Suggestion To Retain Existing NO2 NAAQS

Inside EPA

EPA is proposing to retain its existing nitrogen dioxide (NO₂) national ambient air quality standard (NAAQS) set at 100 ppb over one hour, backing a suggestion from its Clean Air Scientific Advisory Committee (CASAC) to keep the current standard in place because it is adequate to protect public health as required by the Clean Air Act.

The proposed rule, posted to EPA's website July 14, says the decision to retain the existing standard "has been informed by a careful consideration of the full body of scientific evidence and information available" for its review of the NAAQS mandated by the air law. The Clean Air Act says the agency must reviewed its NAAQS for NO₂ and other criteria pollutants every five years, although EPA has fallen behind schedule with some reviews. *The proposed rule is available on InsideEPA.com. (Doc. ID: 203602)*

Environmentalists sued to force a deadline for the NO₂ NAAQS review which should have occurred in 2015, and a court order mandated issuance of a proposed review by July 14 and a final rule by April 6, 2018.

In the proposal, EPA says that its assessment of scientific data on NO₂ emissions' health effects -- including an integrated science assessment that summarized the latest research on the pollutant, and a policy assessment (PA) that outlined options for updating the standard -- justifies keeping the 100 ppb standard in place.

EPA notes that the decision is in line with the recommendation of CASAC, which advises EPA on where to set the level and form of its six NAAQS. CASAC agreed with EPA's assessment that NO₂ directly causes short-term respiratory harm, such as worsened asthma symptoms. But the advisers also said that the evidence for other health effects such as long-term respiratory damage or cardiovascular effects is less conclusive.

In a March 7 letter to EPA Administrator Scott Pruitt, CASAC said that EPA should pursue further research on possible health effects that occur below the 100 ppb limit. The Obama EPA tightened the standard to 100 ppb in 2010, using a novel one-hour averaging time, in order to protect against brief spikes in pollution. An older annual standard of 53 ppb, dating from 1971, remains in effect and is also being kept in place.

Following CASAC's advice, EPA in April published the PA that recommended leaving the NO₂ NAAQS in place, and the new proposal codifies that through rulemaking.

EPA will take comment on the proposal for 60 days following its upcoming publication in the *Federal Register*, and will then weigh that input before issuing a final decision on whether to retain the existing NAAQS. -- *Anthony Lacey*

New Studies May Bolster Environmentalists' Push For Tough NAAQS Inside EPA

Two recently-published academic studies that relied on large populations show ongoing serious health risks from air pollution, linking fine particulate matter (PM2.5) and ozone exposure with increased risk of lung disease and mortality, but also failing to find evidence of adverse effects on the heart from ozone.

Both studies could therefore bolster environmentalists and public health advocates in their fight to defend EPA's current ozone standard of 70 parts per billion from any rollback by the Trump administration, with EPA already saying it will review the standard and delaying its implementation.

In a high-profile study by the Harvard School of Public Health, *Air Pollution and Mortality in the Entire Medicare Population*, published in the June 29 issue of the *New England Journal of Medicine*, researchers found an elevated risk of premature death from exposure to ozone and PM2.5 even at levels below current regulatory limits.

The findings have implications for EPA's current national ambient air quality standards (NAAQS), which may not be tough enough to protect human health and the environment with an adequate margin of safety, principal investigator Francesca Dominici said.

"These findings suggest that lowering the NAAQS for fine particulate matter will produce important public health benefits," Dominici said in a June 28 statement. "This is a study of unprecedented statistical power because of the massive size of the study population."

The study found that lowering the current PM2.5 NAAQS from 12 micrograms per cubic meter (ug/m3) by 1ug/m3 would save about 12,000 lives in the United States annually, while lowering the ozone standard of 70 parts per billion (ppb) could save about 1,900 lives per year.

Meanwhile, the Health Effects Institute (HEI), a joint industry and EPA-funded research body, July 6 published results of its *Multicenter Ozone Study In Older Subjects (MOSES) Part 1 -- Effects of Exposure to Low Concentrations of Ozone on Respiratory and Cardiovascular Outcomes*.

In a June 28 statement, HEI previewed the findings, calling the effort the "largest systematic study ever conducted of human volunteers exposed to ozone air pollution."

The study "has found no evidence of effects on the heart in its healthy, older participants, but did find effects on the volunteers' ability to breathe, even at low levels."

The study authors caution, however, that the "observed lack of cardiovascular effects may not be generalizable to the overall adult population, which includes people who are less healthy and who are exposed to multiple pollutants for long periods of time."

Further, the study "provides confirmation of ozone effects on the lung at concentrations similar to the current air quality standard" of 70 ppb. -- *Stuart Parker*

House Approves Bill Slowing NAAQS Reviews, 2015 Ozone Standard Inside EPA

The House voted July 18 largely along party lines to approve legislation overhauling the national ambient air quality standards (NAAQS) program to make reviews less frequent and delaying implementation of EPA's strict 2015 ozone standard, clearing the path for a likely contentious Senate debate on the issue.

Lawmakers voted 229-199 to approve H.R. 806 in the face of concerted opposition from Democrats who warn the bill would gut the Clean Air Act's public health protections.

Four Democrats joined with most Republicans to approve the bill, while 11 Republicans joined with the remaining Democrats to oppose the measure.

A Senate companion bill, S. 263, is co-sponsored by West Virginia Democrat Sen. Joe Manchin, but other Senate Democrats will likely oppose the bill, casting serious doubt on its prospects.

The bill would delay by eight years the implementation of EPA's 2015 ozone NAAQS, which the Obama administration set at 70 parts per billion (ppb), stricter than the previous level of 75 ppb set by the Bush EPA in 2008, which is still in place.

A wide array of industry groups, such as the American Chemistry Council and U.S. Chamber of Commerce, are backing the bill.

A key objection of Republican and industry critics of EPA is that the dual standards means states and facilities must comply with two standards at once, which they say imposes an unreasonable administrative burden.

"Unworkable timeframes included in the 2015 standard created uncertainty for our communities and job creators, and they ultimately penalized hardworking American families," Rep. Bill Flores (R-TX), a bill co sponsor, said in a written statement July 18.

And Rep. David McKinley (R-WV) said on the House floor that EPA's dual standards have created "confusion and duplication."

The bill would also make a series of sweeping changes to the NAAQS program. It would prohibit any ozone NAAQS review before 2025 rather than the air law's current five-year review schedule for all NAAQS.

It would also extend the compliance date for states to meet EPA's 2008 and 2015 ozone NAAQS. The Trump EPA has already announced a one-year implementation delay for the 2015 standard, and similar measures are currently attached as a rider to proposed House appropriations legislation for EPA.

Under H.R. 806, states' suggested designations of areas in attainment or nonattainment with the 2015 NAAQS would now be due in 2024, with EPA's final decisions on designations due in 2025, rather than October this year as currently required. And state implementation plans, outlining states' plans to attain the NAAQS, would not be due until 2026, rather than the current 2020 requirement.

The bill would further extend the NAAQS review cycle from five to 10 years for all six NAAQS, including those for ozone, particulate matter, sulfur dioxide, nitrogen oxides, carbon monoxide, and lead. And it would for the first time allow EPA to consider technical feasibility in setting NAAQS, among other provisions.

Democrats spoke on the House floor to reiterate past criticisms of the bill, while offering a series of unsuccessful amendments to blunt the bill's impact or stop it altogether. For example, Rep. Kathy Castor (D-FL) offered an amendment that would prevent the bill taking effect if EPA's Clean Air

Scientific Advisory Committee determined that it is detrimental to public health.

Democrats were scathing in their attacks on the bill, linking it to Republican attempts to repeal the Affordable Care Act. Rep. Doris Matsui (D-CA), for example, said that combined with the Obamacare repeal effort, the GOP is waging "an all-out assault on America's health," that will "permanently damage the Clean Air Act." But Republicans insisted the bill does not roll-back NAAQS protections, merely tries to ease their implementation.

Republicans who voted against the bill are Reps. Carlos Curbelo (FL), John Faso (NY), Brian Fitzpatrick (PA), Frank LoBiondo (NJ), Brian Mast (FL), Bruce Poliquin (ME), David Reichert (WA), Ileana Ros-Lehtinen (FL), Mark Sanford (SC), Chris Smith (NJ) and Elise Stefanik (NY). Democrats who voted for the bill are Reps. Sanford Bishop (GA), Henry Cuellar (TX), Collin Peterson (MN) and Jim Costa (CA).

Democratic States Defend Legal Standing For Role In Ozone NAAQS Suit Inside EPA

A coalition of Democratic-led states is defending its legal standing to intervene in litigation to defend the Obama EPA's stricter ozone national ambient air quality standard (NAAQS), saying the states face harm if an appellate court vacates the standard and rejecting the Trump administration's claim that they face a strict test to win a role in the suit.

In [a July 24 filing](#), the seven states led by California and the District of Columbia argue that their standing is "self-evident" and that the agency's own administrative record for the rulemaking underscores the potential harm states face if a court ruling weakens the ozone standard. "[N]o evidence outside the administrative record is necessary for the court to be sure of" states' standing, giving them a right to intervene in the litigation, according to the filing.

They say the Obama EPA's record for the 2015 decision to tighten the ozone NAAQS from the prior 2008 limit of 75 parts per billion (ppb) down to 70 ppb shows that a stricter standard provides "concrete benefits" to states, and that an appellate decision upholding the rule would prevent the loss of those benefits, which gives them standing to sue.

Several GOP states and industry groups filed legal challenges to the 2015 rulemaking in the U.S. Court of Appeals for the District of Columbia Circuit that have been consolidated in the case *Murray Energy Corporation v. EPA*. After President Donald Trump took office, the agency successfully asked the court to halt the case while it reviewed the rule for possible reconsideration. In the interim, EPA must provide status updates to the court.

The coalition of Democratic-led states recently moved to intervene in the litigation in order to defend the rule, after recent EPA moves prompted their fears that the agency might weaken the NAAQS.

For example, the states cited EPA Administrator Scott Pruitt's recent decision to delay by one year designations for whether areas are attaining or in nonattainment with the 2015 standard. The attainment designations trigger a Clean Air Act clock for states to craft emissions reduction plans to comply with the limit. But Pruitt said he wants the extra time to consider the data underlying the 2015 rule, spurring the states' concerns he might weaken it.

The states -- California, New York, Vermont, Washington, Rhode Island, Massachusetts, Delaware and

Washington, D.C. -- said they “have a vital interest in ensuring that the primary ozone standard is set at a level that adequately protects their residents from the harms of ozone pollution,” saying if the D.C. Circuit vacates the rulemaking, the states “will be deprived of important health protections and extensive economic benefits.”

EPA's own regulatory impact analysis for the 2015 rule showed that the 70 ppb limit “leads to net health benefits of billions of dollars of avoided health care expenses, avoided premature deaths, and thousands of avoided lost work days and tens of thousands of avoided lost school days,” the states argued.

Standing Fight

EPA countered in [a July 17 filing](#) that “[S]tates cannot establish Article III standing to challenge federal agency action by claiming to protect the well-being of their residents.”

The agency argued in its brief that the petition for intervention was fatally flawed because it only claimed that a more lenient standard would harm their residents' health, rather than identifying areas where the states themselves would suffer injury, in the form of increased administrative costs or other burdens on the government. The states “have not identified a concrete and imminent injury to their interests as states” that would give them standing to sue, it said.

In response, the states in their July 24 filing say there is no case law that requires them to demonstrate standing to defend the federal government's actions against private parties' lawsuits. “EPA has not cited any case holding that a state must demonstrate injury to its own interest as a state in order to intervene in defense of a federal rule that, like the 2015 Ozone NAAQS, regulates state conduct, and [the states] are unaware of any such case.”

Even if states had to prove harm to justify legal standing, they say, the risk of vacating the 2015 ozone NAAQS and reverting to a weaker limit on ozone pollution is enough to give them standing. “Such a decision would impair [the states'] interests as administrators of healthcare programs for low-income people and seniors, causing additional expenditures,” they argue. “And premature deaths and missed work and school days resulting from ozone-related health problems will harm [the states'] interests as administrators of schools and as employers.”

They add that “evidence in the administrative record shows that implementation of the 2015 Ozone NAAQS will prevent harm to the health of plants and ecosystems,” and that vacating the rule would damage the states' natural resources. Courts “have long recognized these interests” as a basis for legal standing, they say.

Separately, the states also reject claims by EPA and industry groups who want a weaker NAAQS that their intervention petition is invalid because the deadline to join the *Murray Energy* case passed in 2016.

The states say that the D.C. Circuit “has inherent authority to manage its own docket, including to grant this motion during an abeyance,” and that they need to have a role in the suit to defend the NAAQS in case EPA changes its position and no longer strongly defends the 2015 rulemaking. -- *Anthony Lacey* (alacey@iwpnews.com)

Environmentalists fault EPA bid to delay ozone suit Inside EPA

Environmentalists are criticizing EPA's latest efforts to justify holding litigation over the Obama-era

ozone standards in continuing abeyance, saying it undermines their effort to challenge the adequacy of the standards' stringency -- though they stop short of asking the court to change the suit's posture.

"The abeyance heavily burdens their right to seek judicial relief on their claims as petitioners that, among other things, the 2015 standards are illegally and arbitrarily weak," they said in a [July 20 letter](#) to the court.

"Compounding these concerns is the lack of any binding limit on EPA's review timeline or even any EPA estimate of how long the review might last. Unbridled delay of the instant case would be unjust and severely harmful to Public Health and Environmental Organizations and their members," they add.

[Days before](#) the U.S. Court of Appeals for the District of Columbia was slated to hear arguments in the case, the court granted an 11th-hour EPA request to delay April 19 oral argument in the litigation, *Murray Energy v. EPA*, to allow the agency to review the 2015 ozone national ambient air quality standard.

The court removed the argument from the court's calendar and placed the case in abeyance pending a further court order, while mandating that EPA file status reports on its review of the Obama EPA decision at 90-day intervals beginning 90 days from the April 11 order until it has reached a decision on whether to change the ozone rule.

In addition to the review of the standard, EPA Administrator Scott Pruitt has also delayed by one year the agency's designations on localities' attainment of the standard. In a [June 6 letter](#) to Arizona Gov. Doug Ducey (R), Pruitt said the extra year will give EPA more time to collect "the most recent air quality data" to make the designations.

In its latest status report to the court, filed July 10, the agency indicated its review of the standard is ongoing.

But environmentalists criticize EPA's status report on where that review now stands. In their July 20 letter to the court, environmentalists charge that "EPA's three-sentence Status Report, filed July 10, 2017, is inadequate and incomplete, for it lacks important information about EPA's review of the 2015 ozone standards."

"EPA's review of the 2015 standards is not merely 'continuing,'" they say, "but is also leading directly to EPA efforts to delay their implementation," citing Pruitt's letter to Ducey. "Though they do not request relief at this time, Public Health and Environmental Organizations remain deeply concerned that they face and will continue to face harms flowing from EPA's review and this fully ripe case's being held in abeyance to allow the review to proceed."

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[Has the moment for environmental justice been lost? ProPublica](#)

Exclusion Of 'Legacy' Uses From TSCA May Limit Cleanups, Critics Tell EPA Inside EPA

EPA is drawing criticism from its children's health advisors and a Region 9 official over its decision to preclude legacy uses of chemicals, such as asbestos, in finished products from review under the new Toxic Substances Control Act (TSCA), bolstering criticisms from environmentalists who say they may sue the agency over its approach.

During a July 18 meeting of EPA's Children's Health Protection Advisory Committee (CHPAC), several panelists objected to EPA's exclusion of legacy uses from the scope of the risk evaluation rule, charging it could undermine remediation efforts and other regulatory requirements.

And an official with EPA's Region 9 who dialed in to the meeting backed the concern, suggesting EPA's determination creates inconsistencies in remediation and other requirements to address TSCA-regulated substances.

But EPA toxics officials who spoke at the meeting downplayed the concerns, saying the law did not provide EPA with authority to address legacy uses even as the officials left the door open to future case-by-case reviews of legacy uses.

EPA's stance is codified in its June 22 final risk evaluation rule that narrowed the definition of covered chemical uses from an Obama EPA proposal that included oversight of legacy uses.

The change is one of several aspects of three final TSCA implementation rules that environmentalists and some Senate Democrats have argued bend to industry demands and will weaken the effectiveness of the bipartisan reform law that former President Barack Obama signed in June 2016.

Many EPA critics are especially concerned over use of this approach in the agency's pending assessment of asbestos, one of the first 10 existing chemicals the Obama EPA selected for evaluation shortly before leaving office, a substance that has widespread legacy uses.

EPA's scoping document for its upcoming assessment of asbestos states that the agency "interprets the mandates under section 6(a)-(b) to conduct risk assessments and any corresponding risk management to focus on current and prospective uses, for which manufacture, processing, or distribution in commerce is intended, known or reasonably foreseen, rather than reaching back to evaluate the risks associated with legacy uses, associated disposal, and legacy disposal." *The document is available on InsideEPA.com. (Doc. ID: 203701)*

But advocacy groups, such as the Asbestos Disease Awareness Organization (ADAO), are criticizing the scoping document as "lackluster" and promising to push to expand it.

The group's founder, Linda Reinstein, said in a July 13 interview with *Inside EPA* that she welcomed EPA's inclusion in the literature search a 2013 National Institute for Occupational Safety and Health (NIOSH) epidemiology study of firefighters, which ADAO urged EPA to review. The study indicates that firefighters' rate of developing mesothelioma, the deadly lung cancer linked to asbestos exposure, is twice that of the general population, according to an October 2013 NIOSH press release describing the study, which included nearly 30,000 firefighters in three cities, Chicago, Philadelphia and San Francisco.

But she said such evidence supports her point that legacy uses must be considered in EPA's pending risk evaluation. "It's very hard to give up legacy uses when firefighters are dying at twice the rate of the general population," she said, adding that in new comments to EPA on the scoping documents, "We'll argue part of [ongoing] commerce takes in legacy" uses of asbestos. She noted that there are active industries performing asbestos abatement and disposal.

And she added that she and her colleagues are preparing to submit more evidence to EPA showing that there is not a safe level of exposure to asbestos.

EPA faced similar criticisms at the CHPAC meeting. Joel Forman, an associate professor of pediatrics at the Icahn School of Medicine at Mount Sinai in New York and a CHPAC member, faulted the administration's reserving the right to exclude legacy uses from TSCA oversight, noting that risks from common contaminants, such as asbestos, could still be mitigated even if they are no longer produced in the United States.

And the EPA Region 9 official also pressed agency headquarters staff on the exclusion of so-called legacy uses, suggesting the policy led to inconsistent treatment of contaminants. The official said Region 9 requires schools to mitigate risks of building materials containing polychlorinated biphenyls (PCBs), a TSCA-regulated substance, but that other building materials, such as asbestos, may be present in schools and not considered an ongoing use.

"On the use and disposal point in TSCA reform" and not considering legacy issues, the official said, "I wonder how that's being parsed out."

But Tala Henry, director of the Risk Assessment Division in EPA's Office of Pollution Prevention and Toxics (OPPT), shrugged off any direct comparison to PCBs, saying the contaminant is a special case under the law. But Henry said the decision to exclude legacy uses generally from the scope of the TSCA prioritization and risk evaluation rules was the subject of significant debate inside the agency, including with EPA's general counsel, prior to issuance of the final rules.

"TSCA is all about the manufacturing, importing, distribution and use of chemicals," she said. "If none of those things are occurring there's not actually a way for TSCA to deal with the potential risks, so it was decided that legacy uses," or chemicals no longer made for a certain use, would be outside the scope of the rules.

While much of the criticism is aimed at EPA's decision to sidestep review of legacy uses of asbestos, another EPA official told the meeting that the agency still has the ability to review legacy uses on a case-by-case basis.

OPPT Director Jeff Morris suggested during the meeting that covering legacy uses would put EPA in the business of removing old sofas or attic insulation, which often contain chemicals that are no longer manufactured.

Noting that concern, Morris said that EPA's final risk evaluation rule takes a more nuanced approach. He said that in certain situations TSCA tools may allow EPA to address legacy uses, though with other uses the law may not apply, so the administration is reserving the right to exclude certain uses on a case-by-case basis. -- *Dave Reynolds & Maria Hegstad*

Science and Science Communication

Senate Democrats call for an investigation of climate scientist whistleblower complaint *Washington Post*

CLIMATE: Rep. Lamar Smith touts CO2, benefits of warming E&E News PM

Rep. Lamar Smith (R-Texas) thinks carbon dioxide is getting a raw deal.

Fresh off his trip to the warming Arctic, the chairman of the House Science, Space and Technology Committee penned an op-ed in *The Daily Signal* to tout the benefits of carbon dioxide, a greenhouse gas that scientists say is warming the planet at an alarming rate.

"A higher concentration of carbon dioxide in our atmosphere would aid photosynthesis, which in turn contributes to increased plant growth," Smith wrote. "This correlates to a greater volume of food production and better quality food. Studies indicate that crops would utilize water more efficiently, requiring less water. And colder areas along the farm belt will experience longer growing seasons."

Smith extolled the benefits of a changing climate, which he said are "ignored and under-researched," praising ice-free shipping lanes through the Arctic that allow for "faster, more convenient, and less costly routes between ports in Asia, Europe, and eastern North Africa" as well as more lush vegetation.

"Greater vegetation assists in controlling water runoff, provides more habitats for many animal species, and even aids in climate stabilization, as more vegetation absorbs more carbon dioxide," Smith wrote.

"When plant diversity increases, these vegetated areas can better eliminate carbon from the atmosphere."

Smith went on to hail "carbon enrichment" and back the continued burning of fossil fuels to support a greater standard of living.

"Bad deals like the Paris Agreement would cost the U.S. billions of dollars, a loss of hundreds of thousands of jobs, and have no discernible impact on global temperatures," Smith wrote. "Instead of succumbing to fear tactics and exaggerated predictions, we should instead invest in research and technology that can help us better understand the effects of climate change."

Smith's argument is not new in circles that question mainstream climate science.

The conservative Heartland Institute, which is working with U.S. EPA on a program aimed at debating climate change, and groups like the Center for the Study of Carbon Dioxide and Global Change in Arizona have also published papers touting the benefits of CO2.

The majority of scientists have rejected such arguments, pointing firmly instead to the dangers of increased CO2 levels, including increasing temperatures, rising sea levels and more violent storms.

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